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ABSTRACT

A bill was introduced in the Colorado House of Representatives dealing with provisions for a written employment performance evaluation requirement in conjunction with a teacher dismissal provision based on performance evaluation. This paper reviews the major evaluation concepts introduced into the legislative process (which were based on the initial analysis of school board policies) and determines why some concepts were not maintained. The document reports the major questions and problems identified by legal advisors to school boards, professional organizations, and the state department of education regarding the implementation of this act. The concept of using state and local councils to administer this legislation is discussed. Educational research provided the impetus for this bill which is considered one of the most significant pieces of educational legislation passed by the Colorado General Assembly in 1984. (DWH)

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TEACHER EVALUATION: RESEARCH TO LEGISLATION

A Study of Descriptive Data Being Used To Develop Statutory Law

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Northern Rocky Mountain Education Research Association

October 1984

TM 840 784

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Purpose

It is the purpose of this paper to review the major evaluation concepts introduced into the legislative process which were based on the initial analysis of school board policies; to determine, based on the perceptions of "significant actors," why some of these concepts were not maintained. Further, this paper will report the major questions and problems identified by legal advisors to school boards, professional organizations, and the state department of education in Colorado regarding the implementation of this act. Also, the rationale for introducing the use of state and local councils will be briefly explained. This paper will conclude with a discussion of implementation issues as well as general observations.

Introduction

The findings generated in the analysis of school district policies and procedures related to teacher evaluation in Colorado (Broderius, November 1983) were shared with the following organizations: Colorado Association of School Boards; Colorado Association of School Executives; Colorado Education Association; and Mr. Jim Scherer, Member, House Education Committee, Colorado General Assembly. Mr. Scherer had introduced House Bill 1431 during the preceeding legislative session (1983). This bill (1431) dealt with the current Teacher Tenure Act.

Mr. Scherer asked the author to outline the essential elements that may be needed in legislation to deal with the absence of school board policy and possible lack of comprehensive board policies relating to teacher evaluation practices based on the analysis (Broderius, November 1983). Appendix A shows the contents of the outline submitted to Mr. Scherer which reflects the matrix for analysis previously used.

As a result of the content outline submitted and the perceptions and beliefs of Mr. Scherer relating to House Bill 1431 (1983), a bill was introduced in the House of Representatives dealing with provisions "for a written employment performance evaluation" requirement in conjunction with a teacher dismissal provision based on performance evaluation. This bill, House Bill 1338, is found in Appendix B.

House Bill (HB) 1338 passed through the House Education Committee onto the House floor where Section 2 (line 14, page 4) was deleted by floor action (Appendix B).

As it passed to the Senate, it came under the main sponsorship of A. Meiklejohn and K. Arnold. Mr. Meiklejohn is Chair of the Senate Education Committee; K. Arnold is a member. It was at this point in what became state law (Appendix C, An Act, HB 1338, 1984) that the supervisory powers of the State Board of Education (see page 2, 22-9-104), the concepts of a state council (see page 3, 22-9-105), and school district council (page 5, 22-9-107) were added.

Deletions and Additions

In Table 1 the original evaluation concepts introduced are listed. In column 1 the items marked indicate that the concept did not prevail through the legislative process. These items are 2c, 4a, 4c, 6, 7d, and 7e. In column 2, the items marked signify that these concepts were added. They are 4e, 5b, 7d, and 9.

Discussion of Deleted Items

2c: "All other district employees." The reason for introducing this concept was to reflect the idea that personnel evaluation processes within an organization are more readily acceptable if all employees are evaluated. It should be noted that item 2b, "all administrators," was amended to specifically identify principals as a function to be evaluated. Also, the bill was restrictive by title to "Certificated Personnel Performance Evaluation Act," therefore the issue of evaluating non-certificated school district employees could not be addressed. This restriction would obviously not prohibit a school district from evaluating non-certificated personnel.

4a: "Serve as the basis for decisions related to the retention and continuing employment (tenure?). This was specifically addressed in Section 2 of the original bill (Appendix B) and was related to HB 1431 of the previous year. There was the intent to ensure "due process" in this language although it would have eliminated the current teacher tenure statute. One of the major arguments against this section was not one of substance but rather that it could create (if unchanged in subsequent years) a "dual" tenure system for several years. This potential development was seen as undesirable. Also, there was a uniform perception that the development of Senate Bills 200 and 212 would have taken precedent over this section. Senate Bill 200, which was passed into law, provides for pilot programs for school districts to establish performance based pay plans. Senate Bill 212, which was not passed into law, would have established an ascending ladder of certification for teachers and principals and a single level of certification for administrators other than principals. It also would have empowered the State Board of Education to define each level of certification, establish minimum educational and training qualifications, therefore setting fees, designing and administering examinations, and granting waivers from any of the provisions of the act. Most importantly, it would have provided that control over terms of employment of certificated personnel be retained by local boards of education (Appendix D).

The major argument to eliminate this section, which was of substance, was that the establishment of and functional experience with a sound performance evaluation system was prerequisite to any comprehensive reconsideration of redefining tenure, use of performance or differentiated pay concepts on the implementation of a career ladder concept.

Table 1

CONTENT OUTLINE FOR LEGISLATIVE CONSIDERATION: ITEMS DELETED, [ADDED], AND/OR MAINTAINED

Establishment of Teacher Evaluation Policy and Procedures	Deleted	Added	Maintained
I. All school districts are required to have written policy and related procedures regarding the evaluation of all district personnel, including all certified persons and all other district employees [with the involvement of certificated personnel and citizens at the local and state level].		X	X
II. Such policy and procedures shall address the following areas specifically:			X
1. Who is to be the evaluator?			X
By title or position			X
2. Who is to be evaluated?			X
a. all certificated personnel			X
1) tenured			X
2) non-tenured			X
3) temporary			X
b. all administrators [and principals]		X	X
c. all other district employees	X		
3. How frequently will the evaluation be completed?			X
a. of sufficient frequency [duration] to provide for reliable data from which to generalize the findings		X	X
4. The purposes of the evaluation shall include but not be limited to:			X
a. serve as the basis for decisions related to the retention and continuing employment (tenure?)	X		
b. serve as a basis for the improvement of instruction			X
c. enhance the achievement of district and building instructional priorities	X		
d. enhance district curriculum implementation			X
e. serve as the basis for professional growth and development [to evaluate the level of performance of certificated personnel]		X	
5. The methods of evaluation shall include but not be limited to:			X
a. direct observations			
b. systematic data gathering procedures [No informality shall invalidate the evaluation].		X	X
c. specifying criteria in advance			X
6. The length of observations is to be stated			
a. to be of sufficient duration to assure the collection of reliable data			X (sec 3a)
7. Legal and constitutional considerations shall include but not be limited to:			X
a. first and fourteenth amendment rights are to be observed			X
b. reports to be discussed and signed by evaluator and evaluatee with copies for each party [signature does not indicate agreement].		X	X
c. specific improvements needed to be noted			X
d. no hearsay or data gathered by electronic listening devices may be used in the evaluation reports [without consent of evaluatee]	X	X	X
e. other considerations to assure that evaluations are conducted openly and with professional decorum	X		
8. The development of reports shall include but not be limited to the following procedures regarding evaluation reports.			X
a. shall be written			X
b. shall set forth recommendations clearly			X
c. shall be specific as to strengths and weaknesses			X
d. shall be reviewed [and signed] by "next-level" supervisors		X	X
e. shall identify specific observation date	X		(see 5[])
f. shall identify data sources			X
9. Other considerations deemed necessary and appropriate by school boards to ensure the development, implementation and utilization of comprehensive teacher evaluation practices in each district		X	X
[Evaluator to be evaluated on his ability to make fair, professional, and credible evaluations . . .]		X	

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4c: "Enhance the achievement of district and building instructional priorities." The concept that teacher performance should aid the school district in attaining instructional goals originated from the school district and building processes utilized for state accreditation. It could also be associated with North Central Association school accreditation. While not addressed specifically in the act, the perceptions are that this concept was addressed within the legislative declaration (Appendix C, 22-9-102).

6: "The length of observations is to be stated and to be of sufficient duration to assure the collection of reliable data." Apparently the "length of observation" was partially confused with item 3a, the frequency of evaluation although these are two separate concepts of reliability. Also, there was some general discussion that persons could be evaluated every three years. The legislative authors did not agree with such discussion but rather than specify the length of observations on frequency of evaluation expected school boards to take this need into account. These concepts are now being addressed in the development of rules and regulations by the state department of education.

7d: "No hearsay or data gathered by electronic devices . . ." This phrase, "no hearsay" was thought to be better addressed by requiring that evaluators "identify data sources." This will be further discussed in the subsequent section of this report, Legal Discussions.

7e: "Other considerations to assure that evaluations are conducted openly and with professional decorum." This language was judged to be vague and therefore not operational in statutory form. While that judgment is understandable, the concept was within the section dealing with "legal and constitutional considerations" and was intended to support the formative (improvement) statements found in the legislative declaration. Also, the necessity of placing personnel evaluation practices within the context of openness and professionalism was judged important. Notwithstanding, such logic did not prevail. Part of this consideration was subsumed within the requirement that the product of the evaluation process shall be discussed and signed by the evaluator and evaluatee, as well as signed by the "next level" supervisor. Within this latter process it was subsumed that the reviewer would determine whether the conclusions reached could be supported by the data presented, i.e., a congruence check.

Discussion of Added Items

4e: "Serve as the basis for professional growth and development." The concept of also determining the "level of performance" was added but was not further delineated. This was done in reference to the concept embodied in SB 200 which allowed for pilot programs to establish performance based pay plans. While the act calls for the development of criteria for evaluation, there is no further development specifying the need to set standards for levels of performance, i.e., satisfactory, minimum, excellent or unsatisfactory.

5b: "Systematic data gathering procedures." An additional statement appears indicating that "no informality shall invalidate the evaluation." This was added to address the possibility that "technical" errors could set aside an evaluation upon challenge. An example of this was "the use of wrong forms," or "putting the wrong date on a form" when the scheduled observations were mutually reset. The issue of "informality" was also intended to significantly decrease the possibility of litigation. It would appear, if that was the intent, that this should have been placed in Section 7, Legal and Constitutional Considerations. This addition did not have apparent reference to informal or formal observations.

7d: "No hearsay or data gathered by electronic listening devices may be used in the evaluation reports [without consent of certificated personnel]." Previous mention has been made to the elimination of the concept "no hearsay" in 7d. There will be a subsequent discussion of this in the next section of this study, Legal Discussion. With the addition of the phrase "without the consent of certificated personnel," the intent of the original concept was changed. Given that apparently, in some districts, teachers wish to and do use "electronic devices" such as audio and videotapes as the basis for certain types of evaluations, the intent of eliminating unknown intrusions continues to be safe guarded.

9: "Other considerations deemed necessary and appropriate . . ." Another section was added [22-9-106(4)] which reads, "Every person who is responsible for the evaluation of certificated personnel shall be evaluated on his ability to make fair, professional, and credible evaluations of the personnel whom he is responsible for evaluating." While concept 5c appears in the act as 22-9-106(2)(e) which allows local boards of education to state the criteria for evaluation for each certificated personnel position evaluated, this subsequent section [22-9-106(4)], in fact, specifies part of the criterion base for the evaluator, e.g., principals, director of elementary/secondary education, assistant superintendents, and superintendents. These specifications appear because of previous experience as a school board member by one of the sponsors of the bill. This was also previously discussed at the end of 7e above.

Legal Discussion

A meeting was held for the purpose of identifying items of concern regarding the interpretation and implementation of the "Certificated Personnel Performance Evaluation Act," (CPPEA). Representatives at the meeting included the Commissioner of Education and members of his staff, school administrators, school board representatives, Parent-Teacher-Student Association representation, and five attorneys. The attorneys represented two teacher organizations, the Attorney General's office, and two school districts.

It was clarified at the onset that this act was not applicable to certificated staff members who were associated with Boards of Cooperative Educational Services.

22-9-106(1)(c): The frequency and duration of the evaluations which shall be of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn;

It was noted that it would be necessary to make a distinction between an "observation" and an "evaluation." As these two concepts are operationalized, it was suggested that each be defined as to a minimum in regard to frequency and duration. It was suggested, for example, duration be defined as the length of a classroom observation and/or that there could be a three year evaluation cycle for a tenured teacher that was one semester in length after the completion of which an evaluation report would be written. Others suggested that evaluation is an on-going, continuous process and that duration should only refer to the length of a classroom observation. One expression indicated that every certificated person in schools should be evaluated every year. The discussion ended with the understanding that these issues would be resolved with the guidelines to be developed.

22-9-106(1)(f): The methods of evaluation, which shall include, but shall not be limited to, direct observations by the evaluator and a process of systematic data-gathering.

The discussion regarding this section was related to the part of the legislative declaration which stated one of the purposes of a performance evaluation system was "to evaluate the level of performance of certificated personnel" (22-9-102). While some argued that this required the development of some type of quantitative system, i.e., satisfactory/unsatisfactory, others contended that a system would not necessarily have to be quantitative in nature in its entirety. To others it appeared that the language of 22-9-102 (level of performance) could become the stepping stone to the career ladder or merit pay concepts.

22-9-106(3): An evaluation report shall be issued upon the completion of an evaluation made pursuant to this section and shall:

It was again noted that there is a difference between "observation" and "evaluation" and that such a distinction should be made. As to the issue of whether a time line should be developed for this process, it was determined that this was up to the discretion of local boards of education.

22-9-106(3)(e): Identify data sources;

Different interpretations of this requirement for school board policy arose. The first question asked was how specific these sources had to be identified in a policy. The initial concern was whether a complaint by a parent or parents would have to be identified as a "data source" if they presented a complaint about a teacher or other certificated personnel. This became an issue of using hearsay information. It was suggested that some parents fear retaliation against their child if they are identified. Another suggested that a data source need only be revealed if the information influenced the evaluator to the extent it was reflected in the evaluation. One observer suggested that a parent complaint should only serve as suggestion as to what to look for during classroom observations. Only if the

teacher behavior appeared to the observer did it become an issue of classroom performance. One observer suggested that a board policy requiring that teachers be notified of any parent complaint immediately would be useful. A question was raised as to whether in formative evaluation a parent complaint could be left unrevealed but if it became the basis for summative evaluation it should then be disclosed. It was concluded that within a court of law all data sources would have to be identified and that this issue of use of anonymous data needed to be thought through carefully.

The discussion then shifted to the question as to whether performance data were only a matter of classroom performance and, therefore, did not include non-classroom performance. Reference was made to 22-9-106(1)(d). While there appeared to be agreement that this act focused on classroom instruction, based on the additional phrase, "measure the level of performance of certificated personnel within the district," there were performance areas beyond the classroom which could and should be taken into account.

Another interpretation of the "data sources" was discussed. It was suggested that a department chair; student evaluations; other teachers, perhaps those on a teacher improvement cadre; lesson plans; and teacher-made tests and materials could serve as a data base.

It was strongly suggested that this area of discussion could become the "center pieces for termination of personnel" and should be carefully defined in the guidelines to be issued by the state department of education.

> 22-9-106(3)(g): Be reviewed by a supervisor of the evaluator, whose signature shall also appear on said report.

It was pointed out that in small districts it is frequently the case that one person serves as the elementary and secondary principal as well as the superintendent. It was a matter of concurrence that "supervisory" signatures indicates that the appropriate procedures have been followed not to verify specifically the substance of the evaluation report and that this should not present a problem for any district regardless of size. There appeared to be no question as to whether all persons, including the superintendent, had to be evaluated [see 22-9-106(1)(b)]. This discussion was left with the understanding that the intent and the specific problem would be resolved in the guidelines to be developed.

> 22-9-106(6): The state board shall approve any school district's existing certificated personnel performance evaluation system and related processes and procedures if such system, processes, and procedures are consistent with this article.

The question was raised as to the effect of this action on an evaluation system that has been agreed upon through the negotiation process. It was agreed that any negotiated agreement is non-enforceable if it is contrary to state statutes. Clearly, all performance evaluation systems for certificated personnel will have to conform to the requirements of the act.

22-9-107(1): Every school district in the state subject to the provisions of this article shall have an advisory school district personnel performance evaluation council . . .

Questions were raised as to when such councils were to be formed. The general consensus was that some councils are already being formed but that the issue of "when" was a matter to be left to local boards of education. It was reported that one district combined the "personnel" function with the district's accountability committee functions.

Discussion of the State and Local Councils

The concept of using councils was introduced because of the successful use of this process by a legislator when serving as a member and president of a school board. This experience was judged to be sufficient to warrant the use of the concept in setting public policy. Further, the sponsor of this concept indicated that such an organizational and process concept has yielded "good, balanced thinking" and "was very professionally done."

Implementation Issues and Competencies

Persons interviewed continually expressed questions concerning the level of knowledge and skills and time available to administrator groups to implement this piece of legislation. In an effort to determine the type and degree of technical support needed by administrators, the act was reviewed in order to develop a survey instrument.

During the development of such a survey instrument, it was determined that there were three major areas in the implementation processes that needed to be addressed. Those areas are planning and development, criteria and standards, and procedures and implementation. This is not to exclude the critical concept of feedback but only to stress the initial areas of possible need for technical assistance to school districts.

The following outline delineates the 19 criteria being recommended for use in this survey. It has been recommended that this survey be scaled to elicit responses to each criteria into one of the following categories: (1) I need basic information, (2) I could use a "refresher" and "update" information, and (3) I can handle this item--no help needed. This scaling is being recommended because of the perceived need to discriminate between the levels of need.

I. Planning and Development

A. Identification processes for selecting members of the local personnel council.
B. Development of appropriate school board policy.
C. Review of published literature related to personnel evaluation including working models.

D. Understand the legal issues related to constitutional law (substantive and procedural due process), and the confidentiality of the data system, as well as the opportunity to improve performance.

II. Criteria and Standards

A. Identifying valid criteria for assessing effective instruction.
B. Identifying valid criteria for assessing professional growth and development.
C. Identifying valid criteria for assessing teaching plans and materials.
D. Identifying valid criteria for assessing human relationships with pupils and parents.
E. Identifying valid criteria for self-assessment by teachers.

III. Procedures and Implementation

A. Understand and can set levels/standards of performance.
B. Understand the reliability issues of frequency and length of visitations.
C. Understand the reliability issues of frequency of composite evaluations to implement the concept of "continuous evaluation."
D. Understand the use of direct observations and related pre and post conferencing techniques including the clinical supervision model.
E. Understand the procedures for writing improvement plans and required standards of performance.
F. Understand the use of pupil evaluation data and limitations of the same.
G. Can differentiate between the use of formative (improvement) and summative (decision-making) data.
H. Understand the limitations of using student test data.
I. Identify procedural due process probes to ensure fairness.
J. Understand the need and limitations of reviewing and/or changing negotiated agreements related to teacher evaluation procedures.

General Observations

The author has pursued the concepts and related issues regarding personnel evaluation by extensive reading and research and while teaching the subject. The research that relates most directly to this piece of legislation was initially stimulated by the large variance of teacher and administrator reports regarding the existence or degree of sophistication in teacher evaluation practices. Further, issues such as quality education, school improvement processes, pupil achievement, and differentiated/merit pay, to mention but a few, seemed to continually, in some manner or other,

relate to the concept of personnel evaluation. Additionally, the commonly held belief that instructional leadership should most frequently begin at the building level did not "square" with the teacher reports of actual practices. However, the descriptive research was not intended to stimulate legislation. Rather, it was shared with others out of frustration and with the hope that apparent major weaknesses would be addressed in administrator preparation programs and practices in the field.

It is interesting, and I believe noteable, that this legislation was sponsored by several legislators who had previous, extensive experience with public schools as board members or in volunteer roles. Without their experiential background and commitment to improving public education, the legislature may well have taken a less productive form or the issue may not have been addressed at all in the legislative arena. Also, it is obvious that the leadership from the state teachers' organizations as well as the state department of education's investment of professional and political "risk capital" to support, improve, and temper this piece of legislation provided impetus. Notable is the apparent low profile from school boards and administrator groups during the legislative process.

It is critical to observe that many of the inferred and stated conclusions and recommendations found in the most recent studies produced by the Rand Corporation, "Teacher Evaluation in the Organizational Context: A Review of Literature" (Darling-Hammond, Wise, & Pease, 1983) and "Teacher Evaluation: A Study of Effective Practices" (Wise, Darling-Hammond, McLaughlin, & Bernstein, 1984), are reflected in this piece of legislation although by coincidence. The discussion in the 1983 report focuses on the ramifications of the differences between perceptions of whether an organization is rationalistic (top-down) or naturalistic (bottom-up) and individual behavioral change within the schooling context. Both would appear to be addressed by (1) the passage of legislation and (2) the use of local and state personnel councils. This legislation is a startling, I believe, manifestation of both concepts, or, at least, it has the potential of representing probably the best of these two concepts. The 1984 report, in the Conclusions and Recommendations section, suggests a localized reflection of "educational goals, management style, conception of teaching, and community values. . ." (p. 66). Again, coincidentally, the use of local and state councils has the potential of causing this recommendation to be accommodated. It does, however, place a great deal of pressure on local boards of education, teachers, and the attendant administrator to respond in a thorough, thoughtful, and knowledgeable manner in both the policy development and implementation stages.

Although it is not possible to predict possible problems with the implementation of this legislation, there is one probable area that is foremost in the minds of the persons interviewed. This possible problem area also relates to the second conclusion reported in the 1984 Rand Report (p. 67). That conclusion is, "Top-level commitment to and resources for evaluation outweigh checklists and procedures." This is related specifically to the recommendation that "The school district should give

evaluators sufficient time, unencumbered by competing administrative demands, for evaluation" (p. 68). Simply, there is an unreasonable belief that administrators only lack training and commitment, not time, to perform the evaluative functions and that sound evaluation procedures do not take very much time. In either case, and for whatever reason, there very well may be emerging a problem in this area. The inherent time demand on evaluators in this legislation, coupled with the reported expectations of teachers, would seem to provide the critical mass for this to be a problem area.

The other possible problem area is the requirement that the evaluation process accommodate both formative and summative purposes. While the stress in the legislative declaration (22-9-102) and prescribed duties of the local board (22-9-106) point sharply toward the formative function, the inclusion of determining the level of performance as a purpose will, in all likelihood, at best, create counterproductive confusion as to the "main purpose" of evaluation. This anticipated problem is considered extensively by conclusions three and four and the related recommendations in the 1984 Rand Report (pp. 70-80). It may be that with the associated needs demanded in Senate Bills 200 and 212 which apparently forced the issue of purpose (improvement vs. level of performance) to become commingled will not allow the original intent of the initial legislation to become as productive as anticipated.

This leads to the final two thoughts to be presented in this paper. The legislative processes are not controlled by any single person. Obviously democratic governance processes are not intended to be autocratic or totalitarian platforms for a single individual; the antithesis is obvious. Educational legislation is subject to the same political "push and pull" activities as any other piece of legislation. In fact, good intentions can and do frequently go awry. This observation is not intended to condemn legislative processes or individuals associated with the same. It is only to say that good intentions often become a vehicle for additional good intentions. If "perfect" legislation were always the outcome, one would have to wonder why there are amendments and subsequent legislation. If one perceives legislation as something less than perfection and believes that incremental change can take place with the assistance of other elected public education officials, one can place these perceived problems in reasonable perspective.

Lastly, it is interesting that straight forward descriptive data could have the power to create the impetus for such legislation. This legislation has been described by others as one of two pieces of significant educational legislation passed by the Colorado General Assembly in 1984. Another description of this legislation is that it is the "cornerstone" or "bedrock" for future legislation intended to improve education in the state of Colorado. We often assume, I think, that inferential data is the preferred approach to research and is the most potent.

APPENDIX A

ESTABLISHMENT OF TEACHER EVALUATION

POLICY AND PROCEDURES

I. All school districts are required to have written policy and related procedures regarding the evaluation of all district personnel, including all certified persons and all other district employees.

II. Such policy and procedures shall address the following areas specifically:

1. Who is to be the evaluator?
   By title or position
2. Who is to be evaluated?
   a. all certificated personnel
      (1) tenured
      (2) non-tenured
      (3) temporary
   b. all administrators
   c. all other district employees
3. How frequently will the evaluation be completed?
   a. of sufficient frequency to provide for reliable data from which to generalize the findings
4. The purposes of the evaluation shall include but not be limited to:
   a. serve as the basis for decisions related to the retention and continuing employment (tenure?)
   b. serve as a basis for the improvement of instruction
   c. enhance the achievement of district and building instructional priorities
   d. enhance district curriculum implementation
   e. serve as the basis for professional growth and development
5. The methods of evaluation shall include but not be limited to:
   a. direct observations
   b. systematic data gathering procedures
   c. specifying criteria in advance
6. The length of observations is to be stated
   a. to be of sufficient duration to assure the collection of reliable data
7. Legal and constitutional considerations shall include but not be limited to:
   a. First and Fourteenth Amendment rights are to be observed
   b. reports to be discussed and signed by evaluator and evaluatee, with copies for each party
   c. specific improvements needed to be noted
   d. no hearsay or data gathered by electronic listening devices may be used in the evaluation reports
   e. other considerations to assure that evaluations are conducted openly and with professional decorum

8. The development of reports shall include but not be limited to the fol-owing procedures regarding evaluation reports.
   a. shall be written
   b. shall set forth recommendations clearly
   c. shall be specific as to strengths and weaknesses
   d. shall be reviewed by "next-level" supervisors
   e. shall identify specific observation dates
   f. shall identify data sources
9. Other considerations deemed necessary and appropriate by school boards to ensure the development, implementation, and utilization of comprehensive teacher evaluation practices in each district.

LDO NO. 84 0771/1 Fifty-fourth General Assembly HOUSE BILL NO. 1338

STATE OF COLORADO

Education

BY REPRESENTATIVES Scherer, Hamlin, Bryan, DeFilippo, Hover, Minahan, Owens, Robb, and Tebedo.

A BILL FOR AN ACT

CONCERNING SCHOOL DISTRICT PERSONNEL, AND PROVIDING FOR A WRITTEN EMPLOYMENT PERFORMANCE EVALUATION THEREOF AND FOR THE DISMISSAL OF TEACHERS IN CONNECTION THEREWITH.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments which may be subsequently adopted.)

Requires, as a condition of accreditation, that all school districts promulgate and implement a written employment performance evaluation policy to apply to all school district personnel. Sets forth the minimum requirements for such policy and requires a written evaluation report to be issued pursuant to such policy. Provides that all teachers not presently tenured and any teachers certified on or after July 1, 1984, may be dismissed for any cause upon written notification and without administrative appeal; except that such teachers who are employed by a school district for three years or more shall have a probationary period and an opportunity to be heard by the board of education of the school district if they are dismissed for incompetence, unsatisfactory performance, or neglect of duty.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 63 of title 22, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

22-63-110.5. Written employment performance evaluation. (1) All school districts shall have a written policy and related procedures to evaluate the employment performance of all district personnel, including all teachers and all other school district employees. Such written employment performance evaluation policy shall contain the following information:

(a) The evaluator, by title or position, for each evaluated employment position;

(b) The employment positions to be evaluated, which shall include all tenured, nontenured, or temporary certified personnel, all administrators, and all other district employees;

(c) The frequency and duration of evaluations, which shall be of such frequency and duration as to ensure the collection of a sufficient amount of data from which general and reliable conclusions and findings may be drawn;

(d) The purposes of the evaluation, which shall be to serve as a basis for decisions relating to the retention and continuing employment of personnel, to serve as a basis for the improvement of instruction in the school district, to enhance the implementation of programs of curriculum in the school district, and to serve as a measurement of the professional growth and development of evaluatees;

(e) The criteria for evaluation for each employment position evaluated;

(f) The methods of evaluation, which shall include, but need not be limited to, direct observations by the evaluator and systematic data gathering.

(2) In implementing such evaluation policy and procedures, the school district shall conduct all evaluations openly and with professional decorum and shall observe the legal and constitutional rights of the evaluatee and no evaluator or school district shall gather or allow to be gathered any data by electronic listening devices for any employee evaluation made pursuant to this section.

(3) (a) An evaluation report shall be issued upon the completion of an employee evaluation made pursuant to this section and shall:

(I) Be in writing;

(II) Contain a written improvement plan which shall be specific as to what improvements are needed in the performance of the evaluatee and shall clearly set forth recommendations for improvements;

(III) Be specific as to the strengths and weaknesses in the performance of the evaluatee;

(IV) Specifically identify when the evaluatee was observed;

(V) Identify data sources;

(VI) Be discussed between and be signed by the evaluator and the evaluatee, each to receive a copy of the report;

(VII) Be reviewed by a superior of the evaluator whose

signature shall also appear on said report.

(b) An evaluation report issued pursuant to this subsection (3) shall contain only the first person observations of the evaluator and shall not contain any observations, suggestions, comments, or criticisms concerning the evaluatee made to the evaluator by any third party.

(4) A school district shall submit the written employment performance evaluation policy promulgated pursuant to this section to the state board of education for approval. Implementation of such evaluation policy shall be a condition for accreditation of each school district in this state, and such school district shall submit evidence of compliance to the state board of education.

SECTION 2. 22-63-111, Colorado Revised Statutes, is REPEALED AND REENACTED, WITH AMENDMENTS, to read:

22-63-111. Dismissal - reasons. (1) Any teacher, except a tenure teacher, employed by a school district may be dismissed for any cause upon written notice from the board of the school district employing the teacher. Any appeal by such teacher of the board's decision to dismiss him from employment shall be to a court of competent jurisdiction.

(2) (a) Notwithstanding the provisions of subsection (1) of this section, any teacher employed by a school district for at least three years may be dismissed on the grounds of incompetence, unsatisfactory performance, or neglect of duty only as provided by this section. Pursuant to section

22-63-110.5, such teacher, prior to dismissal action under this section, shall have received a written employment performance evaluation report, which shall have included a written employment performance improvement plan.

(b) If, after such evaluation report is submitted to the board, the board desires to terminate the employment of such teacher, the board shall give written notice of its intent to dismiss for incompetence, unsatisfactory performance, or neglect of duty. Said teacher shall be placed on probation for one semester of the academic school year, during which time he shall perform his employment duties in accordance with the guidelines of the improvement plan contained in said evaluation report.

(c) The board shall appoint an evaluation team, which shall consist of one administrator from the school district, one teacher from the school district, and one member of the general community who resides in the school district. Said evaluation team shall work with the teacher during the probation period and assist the teacher in improving his employment performance.

(d) At the close of the probation period, the evaluation team shall make a written report of its findings with a recommendation to the board as to whether the teacher should be dismissed or retained. Such recommendation shall not be binding on the board. A copy of the evaluation team's findings and recommendations shall be provided to the teacher,

and such teacher shall have an opportunity to appear before the board to support or refute any fact, finding, or recommendation contained in the evaluation team's report or to speak to the board on his own behalf.

(e) The board shall take action to dismiss or retain the teacher or to place the teacher on further probation. Any appeal by the teacher of the board's decision to dismiss him from employment shall be to a court of competent jurisdiction.

(f) This section shall apply to all certified teachers who have not attained tenure status pursuant to section 22-63-112 as of July 1, 1984, and to any teacher certified on or after said date.

SECTION 3. Effective date. This act shall take effect July 1, 1984.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

An Act

HOUSE BILL NO. 1338.

BY REPRESENTATIVES Scherer, Hamlin, Bryan, DeFilippo, Hover, Minahan, Owens, Robb, Tebedo, Allison, Brown, Burkhardt, Chavez, Dunning, Fenlon, Fine, Hernandez, Herzog, Hume, Knox, Larson, Markert, Pankey, Taylor, Taylor-Little, and Webb; also SENATORS Arnold, Allshouse, Meiklejohn, and Strickland.

CONCERNING A WRITTEN EMPLOYMENT PERFORMANCE EVALUATION OF CERTIFIED SCHOOL DISTRICT PERSONNEL, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 22, Colorado Revised Statutes, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 9

Certificated Personnel Evaluations

22-9-101. Short title. This article shall be known and may be cited as the "Certificated Personnel Performance Evaluation Act".

22-9-102. Legislative declaration. The general assembly hereby declares that a system of performance evaluation is crucial to improving the quality of education in this state and declares that such a system shall be applicable to all certificated personnel in the school districts throughout the state. The purposes of the evaluation shall be to serve as a basis for the improvement of instruction, to enhance the implementation of programs of curriculum, to serve as a measurement of the professional growth and development of certificated personnel, and to evaluate the level of performance of certificated personnel. The general assembly

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

further declares that a professionally sound and credible system of certificated personnel performance evaluation shall be designed with the involvement of certificated personnel and citizens of the school district.

22-9-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Certificated personnel" means any persons employed to instruct students or to administer, direct, or supervise the instructional program in a school in the state who hold valid teacher certificates or letters of authorization pursuant to the provisions of article 60 of this title.

(2) "Local board of education" or "local board" means the board of education of the school district.

(3) "School district" means any school district organized and existing pursuant to law but does not include a junior college district.

(4) "State board" means the state board of education established by section 1 of article IX of the state constitution.

22-9-104. State board - powers and duties. (1) The state board shall promulgate guidelines relating to the planning, development, implementation and assessment of a certificated personnel performance evaluation system that may be followed by each school district within the state. In promulgating said guidelines, the state board shall allow each school district to involve and consult with the certificated personnel and citizens of the school district. Each school district shall have the flexibility needed to develop a system of personnel performance evaluation that is specifically designed to meet the individual needs of that school district.

(2) The state board shall:

(a) Provide training and leadership and give technical assistance to school districts in the development of a certificated personnel performance evaluation system.

(b) Work and cooperate with the state's universities and colleges which have teacher, principal, or administrator education programs to assure that persons having evaluation responsibilities will receive adequate education and training which will enable them to make thorough, credible, fair, and professional quality evaluations of all certificated personnel whom those persons may be responsible for evaluating;

(c) Consult with the state certificated personnel

performance evaluation council created in section 22-9-105 with regard to the guidelines relating to the planning, development, implementation, and assessment of certificated personnel performance evaluation systems;

(d) Review school district processes and procedures for certificated personnel performance evaluation systems to assure that such systems are professionally sound and will result in a fair, adequate, and credible evaluation; and

(e) Withhold or suspend the accreditation of any school district and publicize such withholding or suspension of accreditation if it determines that the school district has not complied with the provisions of this article.

22-9-105. State certificated personnel performance evaluation council created - duties. (1) The state board shall appoint an advisory state certificated personnel performance evaluation council, which shall consist of the following members: Seven certificated personnel, each from a different school district, four of whom shall be teachers; three citizens, each from a different school district; a representative from an existing council whose members are deans of education; and one member from the department of education. The council shall elect its chair. No more than six members shall belong to any one political party.

(2) Said council shall meet regularly and shall report to the state board on the planning and development of and on the professional quality, credibility, implementation, and assessment of certificated personnel performance evaluation systems and their processes and procedures.

(3) Each school district shall submit to the state board or to the state certificated personnel performance evaluation council such information or data concerning said district's certificated personnel performance evaluation system and its processes and procedures as may be requested by the state board or such council.

22-9-106. Local boards of education - duties. (1) All school districts shall have a written system and related procedures to evaluate the employment performance of school district certificated personnel, including all teachers, principals, and administrators. Each school district shall report to the state board concerning the status of the development of said district's employment performance evaluation system. The state board shall compile the respective progress reports of the school districts in the state and shall prepare an interim report for the general assembly no later than March 1, 1985, and shall prepare a final report for the general assembly no later than January 1,

1986. Such system and procedures shall be implemented and become effective no later than July 1, 1986. In developing the certificated personnel performance evaluation system and any amendments thereto, the local board shall consult with administrators, principals, and teachers employed within the district and the school district certificated personnel performance evaluation council created pursuant to section 22-9-107. The performance evaluation system shall contain, but shall not be limited to, the following information:

(a) The title or position of the evaluator for each certificated personnel position to be evaluated;

(b) The certificated personnel positions to be evaluated, which shall include all tenured or nontenured certificated personnel, all part-time teachers as defined in section 22-63-102 (4), and all administrators and principals;

(c) The frequency and duration of the evaluations, which shall be of such frequency and duration as to insure the collection of a sufficient amount of data from which reliable conclusions and findings may be drawn;

(d) The purposes of the evaluation, which shall serve as a basis for the improvement of instruction, enhance the implementation of programs of curriculum, serve as a measurement of the professional growth and development of certificated personnel and measure the level of performance of certificated personnel within the school district;

(e) The criteria for evaluation for each certificated personnel position evaluated;

(f) The methods of evaluation, which shall include, but shall not be limited to, direct observations by the evaluator and a process of systematic data-gathering.

(2) In implementing such evaluation system and procedures, the school district shall conduct all evaluations so as to observe the legal and constitutional rights of certificated personnel, and no evaluation information shall be gathered by electronic devices without the consent of the certificated personnel. No informality in any evaluation or in the manner of making or recording any evaluation shall invalidate such evaluation.

(3) An evaluation report shall be issued upon the completion of an evaluation made pursuant to this section and shall:

(a) Be in writing;

(b) Contain a written improvement plan, which shall be specific as to what improvements are needed in the performance of the certificated personnel and shall clearly set forth recommendations for improvements;

(c) Be specific as to the strengths and weaknesses in the performance of the individual being evaluated;

(d) Specifically identify when a direct observation was made;

(e) Identify data sources;

(f) Be discussed and be signed by the evaluator and the person being evaluated, each to receive a copy of the report. The signature on the report of any person shall not be construed to indicate agreement with the information contained in the report.

(g) Be reviewed by a supervisor of the evaluator, whose signature shall also appear on said report.

(4) Every person who is responsible for the evaluation of certificated personnel shall be evaluated on his ability to make fair, professional, and credible evaluations of the personnel whom he is responsible for evaluating.

(5) The school district certificated personnel performance evaluation system, processes, and procedures may be in accord with the guidelines adopted by the state board. The system shall be developed after consultation with the school district certificated personnel performance evaluation council created pursuant to section 22-9-107 with regard to the planning, development, adoption, and implementation of such system, and said council shall conduct a continuous evaluation of said system.

(6) The state board shall approve any school district's existing certificated personnel performance evaluation system and related processes and procedures if such system, processes, and procedures are consistent with this article.

22-9-107. School district personnel performance evaluation councils - duties. (1) Every school district in the state subject to the provisions of this article shall have an advisory school district personnel performance evaluation council, which shall, at a minimum, consist of the following members to be appointed by the local board of education: One teacher, one administrator, and one principal from the school district; one resident from the school district who is a parent of a child attending a school within said district; and one resident of the school district who is not a parent with a

child in the district.

(2) Said council shall consult with the local board as to the fairness, effectiveness, credibility, and professional quality of the certificated personnel performance evaluation system and its processes and procedures and shall conduct a continuous evaluation of said system.

(3) The council may be composed of any other school district committee having proper membership, as defined in subsection (1) of this section.

22-9-108. Universities and colleges - duties. Every university and college within the state which has an educational program for the training of a school teacher, principal, or administrator shall cooperate with the state board in connection with the state board's duties under section 22-9-104.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of education, for the fiscal year beginning July 1, 1984, the sum of thirty thousand dollars ($30,000), or so much thereof as may be necessary, for the implementation of this act.

SECTION 3. Safety clause. The general assembly hereby

finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Carl B. Bledsoe
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Ted L. Strickland
PRESIDENT OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Nielson
SECRETARY OF
THE SENATE

APPROVED May 14, 1984 3:33 pm

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

AL MEIKLEJOHN
State Senator
7540 Kline Drive
Arvada, Colorado 80005

Senate Chamber
State of Colorado
Denver

COMMITTEES
Chairman of:
Education
Member of:
Appropriations
Business Affairs and Labor
Transportation

MEMORANDUM

To: Legislative Drafting Office

From: Senator Al Meiklejohn

Date: 2-20-84

Re: Proposed Bill on Educator Training, Examining, Certification, and Career Ladder

The bill should have the following provisions, not necessarily in this arrangement and certainly not in these words.

(1) There should be a declaration which recites the state's interest in public education and which declares that being a teacher, principal, or administrator is a profession and that these persons must have hign standards of education and training. This should be a really good statement of the required professionalism and the public interest therein.

(2) We will need a definition section to define at least teacher, principal, and administrator.

(3) A section which states that no one is to be employed in the public schools without an effective certificate as a teacher, a principal, or an administrator with the certificate being appropriate to the employment as to subject area, grade level, and perhaps other things.

(4) All certificate holders and all certificates are subject to all present and future requirements and all present and future terms and conditions.

(5) The State Board is to do the following things:

(a) Designate certificates for teachers under the following headings: Teacher, Senior Teacher, Associate Master Teacher, and Master Teacher. Certificates for Principal will be designated as Principal, Associate Master Principal, and Master Principal. Certificates as an Administrator will be so designated.

The State Board is to be given the authority to designate these certificates by grade level and course area.

(b) The Board is to be given the power and duty to prescribe the necessary education, training and experience for all of the above positions. The Board is to designate at least the minimum course content and subjects which each of these persons is to take in college or university. The Board should designate the particular skills and skill areas that these persons will be required to show proficiency in prior to certification.

(c) The Board will be given the power to approve or disapprove the teacher education unit in all universities and colleges insofar as education at that university or college might be relied upon to obtain a Colorado certificate.

(d) The Board will be given the power to examine each college or university as to its compliance with state standards for teacher, principal, or administrator training and education.

(e) The Board is to be given the power to give examinations to applicants for all of these certificates.

As to Teacher, the examinations will be as follows:

(i) Junior year in college, a basic skills examination which is reading, mathematics, and English and language arts.

(ii) Entry level professional exam.

(iii) Examinations for each of the advanced teacher levels.

(iv) The Board is to fix the type of examination or even design the examination form and fix the passing grade.

As to Principals, the examinations will be as follows:

(i) The entry level professional examination.

(ii) The professional examination for each of the advanced principal levels.

(iii) The Board has the power to either design the examination itself or to designate what the examination should be and to fix the passing grade.

As to other Administrators, the Board is given the power to:

(i) Fix the entry level professional examination.

(ii) To either design the examination or select an examination form and to fix the passing grade on such form.

(f) The Board is given the power to provide as to all of these professional qualifications, apprenticeships and terms of actual work experience for advanced levels of professional achievement.

(6) To get an appropriate certificate, an applicant must show:

(a) Have the approved education or advanced education in the proper areas and proper skills.

(b) The education must be from an approved institution.

(c) The applicant must pass the appropriate examination or examinations.

(d) the applicant must have completed satisfactorily the necessary apprenticeship or work or career experience.

(e) In planning for adopting, amending, or revoking the rules and regulations to implement this section, the Board will consult with the Training and Qualifications Council.

(7) The Board will appoint the members of the Training and Qualifications Council and it will consist of three certified teachers, three certified administrators, three

citizens who are not educators, three representatives of the teacher education unit in the state's colleges and universities and one person from the State Department of Education who will act as the Chairman of the Council.

(8) The Training and Qualifications Council should meet frequently to make recommendations to the Board regarding:

Certifications requirements (skills, education, training, work experience, and the like).

Training and education requirements.

University and college quality and qualifications.

Tests and examinations.

Work experience, career development and apprenticeships.

(9) The Training and Qualifications Council is to report on some kind of regular basis to the State Board on the quality and effectiveness of this educator, training and qualification program. Give the State Board evaluations of the program, identify and describe problems and solutions to problems and the like.

(10) To implement this program, the State Board should be given authority to adopt, amend and revoke rules and regulations. The Board should be given authority to phase this program over some kind of a reasonable implementation schedule.

(11) Give the Board authority to fix the amount of fees for applying for a certificate and the amount of fees required to take an examination and perhaps other services. The amount of the fees should be fixed in such a way as to cover the expense of the program.

(12) A provision must be in the bill to grandfather all existing practitioners at their present level of education and experience. In other words, all of the people presently on the job must be grandfathered in in connection with their particular grade area, course content and like matters.

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